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# INTREPID

AND TRULY

## *Orthodox Testimony*

GIVEN BY THE

**Rev. WILLIAM GAHAN,**

*At the TRIM Assizes, Aug. 24th. 1802,*

Wherein the Lessee of CATHERINE O'BRIEN BUTLER,  
was Plaintiff, and the Rev. A. DUNN, Sec.  
to the Roman Catholic College of  
Maynooth, Defendant.

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# TRIM ASSIZES.

AUGUST, 24, 1802.

LESSEE OF CATHERINE O'BRIEN BUTLER,

*Plaintiff;*

REV. A. DUNN,

Secretary to the Roman Catholic College of Maynooth,

*Defendant.*

THIS was an ejectment on the title brought for the recovery of the lands in the pleadings mentioned, which had been devised by the late Lord Dunboyne, to the Trustees of the College of Maynooth, and which will, the Plaintiff his heir-at-law, sought to set aside.

The case for the Plaintiff was stated by Mr. *Serjeant Moore*; who mentioned that Lord Dunboyne had been born and educated a Catholic, and had attained the rank of a Roman Catholic Bishop—that he had afterwards duly conformed to the Protestant Religion, and shortly before his death had elapsed to Popery, and, when weak in his understanding, and under the influence of Catholic Priests, by whom he was constantly visited, had made the will in question, by which he disinherited his sister, who was his heir at law, and her children, and left his estate in the County of Meath, to the Roman Catholic College of Maynooth, having been induced to consider such devise as a meritorious act, and the price of his reconciliation with an offended God—and the learned Serjeant stated, that by the laws now in force, a person relapsing to Popery from the Protestant Religion, was deprived of the benefit of the laws made in favour of Roman Catholics, and was of course, as

under the old Popery laws, incapable of making a will of landed property.

On the part of the Defendant, it was admitted, that the late Lord Dunboyne was seized in fee of the lands in question, and that the Plaintiff was his heir-at-law, which made a *prima facie* case for the Plaintiff.

The case of the Defendant was then stated by Mr. Ponsonby ; who said that the late Lord Dunboyne, being seized in fee of the lands in question, and having no issue himself, nor any descendant in the male line of his family, and having another considerable landed estate in the County of Tipperary, had of his own free will, and, as would be clearly shewn, when perfectly in his understanding, and uninfluenced by any art or practice whatever, left his estate in the County of Meath, to the Trustees of the College of Maynooth, who were empowered by act of Parliament to take landed property to the amount of £1000 per annum, for the benefit of the said College, and had left his other estate, and the rest of his property, to the Plaintiff and her family.— Mr. Ponsonby observed, that an outcry was always raised when any thing of the kind was left to a public body, and that on such occasions a great deal was always said of the hardship of disinherit the heir-at-law, &c. &c. but the learned gentleman said, that if such outcry had been attended to, neither here nor in England should we have to boast of those numerous charitable and public institutions, which formed the pride of each country— and asked why a devise to the College of Maynooth should not be as good and valid as one to the Lying-in-Hospital, Simpson's Hospital, Stevens's Hospital, &c. &c. &c. when the law permitted such devise to be made? The learned Gentleman concluded a very neat and able statement, by observing that it would be proved on behalf of the Defendant, that the testator was of sound mind, uninfluenced, and empowered by law to make the devise in question, and that all he asked from the Jury was, what he knew men of their respectability would not refuse him, viz. a verdict consonant to law and evidence.

On behalf of the Defendants, the will of Lord Dunboyne, containing a devise of the lands in question to the College of Maynooth, was then proved by one of the subscribing witnesses, who also proved that he was of sound mind at the time of making it.

The Plaintiff then proceeded to examine witnesses to impeach the legality of the will so made.

The first witness for that purpose was the Rev. Mr. *Dunlevy*, from Clonmell, who proved that he was Curate to the Rector of Clonmell, a Mr. Moore, when Lord Dunboyne received the Sacrament of the Lord's Supper, on Sunday the 19th August, 1787, during Divine Service in the Parish Church, and assisted that day in giving the Sacrament—and the same witness produced the roll containing the declaration against Popery, and the roll containing the oaths of Allegiance, Supremacy, and Abjuration—and proved that the same were on said day administered by the Rev. Mr. Moore, to Lord Dunboyne; but only one of the rolls so produced appears to be signed by Lord Dunboyne.

The next witness for the Plaintiff was *Dr. Purcell*, who said that he had attended Lord Dunboyne, in his last illness, and had been asked by him to deliver a letter to the M. R. Dr. TROY, which he accordingly did, and brought back a written answer—that he brought a second letter from the deceased to Dr. Troy, and also brought back a written answer—that he was ignorant of the contents of any of the letters, and had no conversation whatsoever at any time with Lord Dunboyne, on the subject of them, or about religious matters of any kind.

The next witness was the M. R. Dr. TROY, who said he was Roman Catholic Archbishop of Dublin—that Dr. Purcell had brought him, shortly before Lord Dunboyne died, two letters from the said Lord Dunboyne, stating a wish to be received back into the communion of the Church of Rome, one of which letters contained an enclosure, which was a letter to the Pope, professing his contrition for having abandoned

the Roman Catholic Religion, and broken his vows as a Catholic Bishop, and requesting forgiveness, and to be again received into the Church. This last letter, Dr. TROY, said he had forwarded to Rome; that finding Lord Dunboyne was not likely to live until an answer came back, he had, of his own authority, consented to send a Roman Catholic Clergyman to him, and had accordingly sent the Rev. Mr. Gahan. That he had been told by one of Lord Dunboyne's nephews, that Lord Dunboyne, intended leaving a considerable part of his estate away from his relations, and giving it to the College of Maynooth, and that he had written to Lord Dunboyne, expressing his disapprobation of such a devise, and recommending him to leave his property amongst his family; that finding Lord Dunboyne persisted, he again wrote to him, telling him that if he was determined to leave something as a mark of his sincerity in returning to the Roman Catholic Religion, it would be as well done by a small legacy as by giving away any part of his inheritance.

The next witness was a *servant maid*, who had lived with Lord Dunboyne, and who swore that the Rev. Mr. Gahan, a Roman Catholic Priest, had frequently visited the deceased in his last illness; that on one occasion when Mr. Gahan quitted the room, where he had been with the deceased, witness went in, that was about twelve in the day; that there was a candle lighting on the table, and a small round silver box, which she opened, and in it found the Sacrament: that Lord Dunboyne was in bed, and desired the witness to bring the box over to him, which she did, when Lord Dunboyne put it under his pillow. Witness said she was a Roman Catholic, and that it was the practice in the Roman Catholic Church, to have candles lighting when the Sacrament was administered.

The next witness was the *Rev. William Gahan*, who before he was sworn, felt some anxiety concerning the formulary of the oath, which he imagined would be tendered to him in the same words, wherein an oath had been tendered to him in the Chancery Office, viz. That

he would give true answer to all such questions, &c. He knew too well the awful nature of a sacred oath not to hesitate at these general expressions; for as he was not in possession of the interrogatories that were to be proposed to him, and as he considered that some interrogatories might probably be proposed, which he conceived he was neither bound nor at liberty to give a direct answer to, he judged he could not with safety of conscience subscribe to the aforesaid general formulary, and therefore he objected to it, saying that he foresaw he might have just reasons for not answering some questions directly in the affirmative or in the negative, and consequently he was not warranted to pledge himself by the solemn tie of an oath to answer *all*. This, in his opinion, would be to run the risk of incurring the horrid guilt of perjury, and exposing himself to the manifest danger of entailing on his soul the wrath and indignation of heaven, which, he said, he would not do to gain the whole universe. Having before made these remarks in the Chancery Office, an explanation ensued, and Mr. Gahan was told by the Examiner, that the meaning of the formulary was, that all such answers as he should give in the cause that was pending, would be true to the best of his knowledge. Whereupon Mr. Gahan readily acquiesced, and having taken the oath in this sense, gave in no answer but such as he was convinced was strictly true in the obvious meaning of his words.

At the Assizes of Trim the formulary of the oath tendered to him appeared to be unobjectionable, it being comprised in the following words: *The evidence you will give shall be the truth, &c.* He then felt happy and quiet in his mind, on finding himself under no necessity of starting objections in the first instance, and troubling the Court with his former apprehensions and anxieties. He looked upon the oath, thus worded, to be no more than a continuation of the oath he had already taken in Chancery, to be expressive only of the same meaning, and to leave a Roman Catholic Clergyman, after taking it, as free to demur, as it leaves



Lawyers and Attorneys, who take it in the usual form, without considering themselves thereby bound to disclose the secrets of their clients.

When Mr. Gahan was sworn, he humbly claimed the protection of the Court, as he was unacquainted with the forms of law proceedings, and apprehended from the ingenuity of lawyers, that his answers might be construed into a meaning which he did not intend, unless he was allowed to explain himself occasionally.—The first question was put by Counsellor O'Grady, and was followed up by a great variety of other questions ingeniously concatenated. He was asked what was his profession and situation in life? He replied that he was a Roman Catholic Clergyman, and a Doctor in Divinity. This latter title, though as he observed, an empty one, unattended with any temporal emolument, Mr. Gahan thought proper to mention, in order to suppress the appellation of *Father Gahan*, which a female witness had introduced before his examination, and which he did not wish to hear taken up from her, and so frequently repeated in a public Court. Counsellor O'Grady then said: Doctor Gahan, have you been acquainted with the late Lord Dunboyne, and how long? Mr. Gahan answered, I have been acquainted with him since the year 1783. Perhaps, said Counsellor O'Grady, it was only since the year 1793. Sir, replied Mr. Gahan, I am certainly not mistaken in the given date, for the year 1786 is so remarkable an epoch with regard to my transactions, that I think I shall never forget it, having then taken a tour through England, France and Italy. Previous to that period, I consulted Lord Dunboyne on the subject of my intended travels, and carried on an epistolary correspondence with him for some time.—I had occasion to go to Cork in the year 1783, and I visited Lord Dunboyne at his country seat in Monkstown, where he was pleased to favour me with his friendship, and seemed to place some confidence in me. Well he might place a confidence in you, replied Mr. O'Grady, with his usual politeness; but how long did your corres-

pondence and intimacy with him continue? I do not recollect, said Mr. Gahan to have had any particular intercourse with him from the time of my departure from Ireland in the year 1786, until about the beginning of May, 1800. However this interruption of our correspondence did not in the interim obliterate from my mind the grateful sense I had of his former kindness to me, and though after my return from the continent I heard various rumours concerning his recantation, I still retained for him that fraternal love and charity, which I am indispensably bound by my principles to bear all men, whatever their religious persuasion may happen to be. Mr. Gahan being then asked if he had visited Lord Dunboyne, at or about the time of his last illness in the month of May, 1800? He acknowledged he had visited him as an old friend and acquaintance; that he did not intrude officiously into his lordship's house, but was directed by his spiritual superior, the Rev. Dr. Troy, to wait on him when he should be called on, and to deliver a verbal message to him; that he was conducted to his lordship's bed-chamber by a gentleman who passed him for a physician, and asked him in the presence of some of the domestics, if he wished to make any alterations in Dr. Purcell's prescriptions? that he, Mr. Gahan, had given no such directions; on the contrary he had so great an aversion to dissimulation, that being asked by the lady of the house where she should send for him, in case of necessity, he frankly told her his name and the place of his residence, Mr. Gahan was then asked if he had conversed privately and confidentially with Lord Dunboyne, at any time during his last illness. He answered in the affirmative, and declared that he was ready to give the court every satisfaction he could, consistently with his duty, by disclosing whatever Lord Dunboyne had authorized and commissioned him to disclose. At our first interview, said Mr. Gahan, our conversation regarded the subject of Dr. Troy's message sent by me, and the answer Lord Dunboyne desired me to return. I told him I

had directions from Dr. Troy, to dissuade his lordship from alienating his landed property from his family.— That he disapproved in the most explicit terms of any part of it being bequeathed to the College of Maynooth. And though I have laid it down as a fixed rule for myself, said Mr. Gahan, not to intermeddle with any gentleman's temporal affairs, yet I cannot help remonstrating against a proceeding, which in my humble opinion, appears to be somewhat unnatural, injurious to the heir-at-law, and likely to be productive of disagreeable consequences. On hearing these remarks, Lord Dunboyne shewed plainly that this was a favorite object of his own free choice, from which he was not to be easily dissuaded; for he immediately rung the bell, drew back the bolt of his bed-chamber, and ordered his writing desk to be brought up to him. Having unlocked it, he took out his will, which had been made before Mr. Gahan had paid him his first visit; he pointed out about three lines written with his own hand about the middle of the third page of the said will, whereby he devised and bequeathed the Dunboyne estate to the trustees of the College of Maynooth. He requested that I would inform Dr. Troy hereof, and let him know that he had taken the advice of professional men upon this matter, and would still consult further on it; that he had a right to dispose of his estate as he thought proper; that he did the heir-at-law no injury; that he had provided amply for his family, by willing unto them one of the two estates he was in possession of; in fine, that the trustees were men of honor and integrity, who would see justice done, &c.

Mr. O'Grady asked Mr. Gahan if he had any conversation with Lord Dunboyne on spiritual matters? Mr. Gahan answered in the affirmative, and said it was usual for Priests, when in company together, to speak of spiritual matters and cases of conscience. Therefore you acknowledge, replied Mr. O'Grady, that Lord Dunboyne was then a Priest. Yes sir, said Mr. Gahan, for, *once a Priest, for ever a Priest*, the character of

the Christian Priesthood being indelible. He was asked if any one was present or privy to their conversation, or could see them through the key-hole, or through the partition of the adjoining chamber? He answered, that whilst they conversed together, the door being bolted, no person got admittance except on two occasions. Their conversation was then suspended, and not resumed until after the departure of the persons for whom the door had been unbolted. He said that to the best of his recollection, there was no key-hole in the smooth inside part of the brass lock of the door, and that the bed-chamber was separated from the next room, not by a partition, but by a wall, Lord Dunboyne being in his bed closely surrounded with curtains, so that God only could have a knowledge of their confidential conversation. Being asked if Lord Dunboyne could see without the light of a candle? Mr. Gahan replied, that he was blind of one eye, and whether he could see well with the other eye or not, he did not take upon himself to decide; for though he had been introduced into Lord Dunboyne's house in the quality of a physician, yet he did not presume to be an oculist. He was then asked if he himself could see without the light of a candle; to which question he replied, saying that he never had visited Lord Dunboyne in the night, being no great admirer of works of darkness. Had he visited him in the night, he might have stood in need of the light of a candle, and of the aid of spectacles also.— But in the open day light he could see tolerably well without the light of a candle, though one would be apt to think that the brilliancy of Mr. O'Grady's eminent talents and the splendour of his eloquence might be sufficient to dazzle the tender eyes of a man upwards of seventy years old. Do you say that upon your oath, replied the Counsellor? No sir, said Mr. Gahan; it was a thought that just occurred to me, and I threw it out by way of a parenthesis. He was then asked if he had or had not seen any candle lighting in Lord Dunboyne's bed-chamber at any time during his last illness? If it

was usual or necessary to have a candle lighting when the Sacrament of the Eucharist is administered according to the rites of the Roman Catholic Church? In answer to these questions, he protested that he had never seen any candle whatsoever lighting in Lord Dunboyne's bed chamber at any time when he was there; that when the Sacrament is administered, it is usual to have candles lighted, as emblems of the light of the Gospel, but that it was not essentially necessary, and might be dispensed with for proper reasons. Mr. Gahan thought it was now high time to put out the candle: However he was asked if he had administered the Sacrament to many sick or dying persons, and whether he had ever in the course of his practice, administered it without the light of a candle? He made answer that he had administered the Sacrament to a great number of sick and dying persons when he was curate of a parish in Dublin, about forty years ago, but did not recollect to have administered it to any of them without a lighted candle, when it could be conveniently procured. Do you recollect said Mr. O'Grady, whether you did or did not administer the Sacrament to any person without the light of a candle in the year 1800, at or about the time that Lord Dunboyne was in his last illness? Mr. Gahan replied, that whether he did or did not recollect any such thing, and whether in his clerical capacity he did or did not know any thing about the matter, he conceived he was not at liberty to tell, nor bound to a disclosure of any fact or the circumstance of any such fact as might tend to criminate himself, since the law does not oblige the greatest culprit thereto. At the same time he declared that he never saw, touched, or made any use whatsoever of the communion box which the female witness, examined this day before him, asserted she found on the table and handed to Lord Dunboyne. Sir, said Mr. O'Grady, you are my witness, and you seem to give evidence on the other side. Mr. Gahan answered: The evidence I give is the real truth; and I solemnly declare that I am not

interested in the present cause, nor unduly influenced by any of the contending parties; nor would I knowingly tell a simple lie on this occasion in order to put the Roman Catholic College of Maynooth in full possession of the two estates of the late Lord Dunboyne.

Being asked if he knew of any Mass or Masses having been offered for the repose of Lord Dunboyne's soul, he said he never heard of any, nor of any bequest being left for such a purpose. He would not deny but he might himself have offered a few private prayers for the spiritual comfort and happy death of the deceased Lord, as he is in the habit of praying for his neighbours of every religious profession, from a motive of fraternal charity, and from a conviction that if his prayers do them no good they will do them no harm. Mr. Gahan was asked if he knew what religious communion Lord Dunboyne professed himself to be about the time of his death, and whether he died in the communion of the Roman Catholic church? Mr. Gahan answered, that abstracting from his situation as a Roman Catholic clergyman, he knew nothing of the matter, and whether in such capacity, he did or did not know any thing of the matter, he conceived he was neither bound nor at liberty to disclose, here he begged leave to explain himself, as he apprehended his words might otherwise be misunderstood.

Being graciously indulged by the court, he said; when Roman Catholic Clergymen are juridically examined on occasions and under circumstances similar to my case, it is laid down as a rule for them to give always uniformly the same answer, in order to prevent the unfavourable conjectures and injurious inferences that might be drawn from their silence at one time, or from their different manner of answering at another. The answer prescribed by Theologians, is, *that they know nothing of the matter.* This mode of answering is perfectly well understood and judged to be strictly true in Roman Catholic countries, because Roman Catholic Clergymen are supposed to have no human knowledge, derived from the general sources of information, or to know nothing of the matters but only as the ministers of Christ. But in the courts of judicature in this country, such an answer, without

an explanatory clause, might be looked upon as a perjury, or at least it would be supposed to imply an equivocation, or a mental reservation, which it is not lawful to make use of in oaths. For this reason I have chosen to make use of a saving explanatory clause, and to answer with the candour and sincerity of a christian, that, *abstracting from my situation as a Roman Catholic Clergyman, I know nothing of the matter contained in the interrogatory now put to me.* And supposing, but not admitting, that I do or do not know; in my clerical capacity, any thing of the matter, I conceive I am not bound or at liberty to disclose; for I cannot conceive that I am bound to act in direct opposition to the duties of my ministry, or to transgress the rules and principles of the Roman Catholic Religion, which I profess, because the free and discreet exercise of it is tolerated by the laws of this realm since the repeal of the penal code. Neither can I conceive that I am bound by the law to *break faith with a protestant*, or a person of a different religious persuasion, because that would be adopting and reducing into practice an odious and impious principle, which is deservedly abhorred by all good christians, and which has been solemnly abjured in the test act of the Roman Catholics of this kingdom. I do really believe that a similar breach of sacerdotal trust would be highly criminal, both in the eyes of God and man; that it would tend to degrade the priestly character; that it would render the sacred ministry of the Gospel odious and contemptible; that it would give public scandal to the faithful, and to be an open violation of the rules of christian morality. I sincerely wish to give this honorable court every satisfaction I can in all matters that regard my public and civil duties, as a loyal subject and an obedient member of society. I am sensible that I am bound by allegiance to disclose, or cause to be disclosed, all traitorous and rebellious conspiracies, and whatever I know or hear to be subversive of good order and the tranquillity of the government under which I live. But I conceive, that in matters purely spiritual, or in cases of conscience, on which I may happen to be consulted in the line of my profession, under an express and solemn promise of the

most inviolable secrecy, I am indispensably bound to observe a profound silence, and not to divulge, either directly or indirectly, without express leave and permission, what passes thus between man and man in a sacred conference, particularly when the divulging and manifestation of it would tend to annoy, aggrieve and injure another either in his person, character, or property.

In answer to several other questions, which were then put, Mr. Gahan said he never saw any minister or priest but himself with Lord Dunboyne during the time of his last illness, and consequently that he was not warranted to depose on oath that he saw his Lordship receive the Sacrament according to the rites of the Roman Catholic Church, or that he was present when he received it, since that would be virtually and equivalently criminating himself, which the law does not oblige him to do; that by his silence in this case he did not mean to give consent, because he had just reasons for being silent, or for not asserting, either one way or the other, whether Lord Dunboyne died a Protestant or a Roman Catholic; that if he asserted that he did not die a Roman Catholic, but a Protestant, he thought he would not be believed, but would be traduced as a perjurer, and that the censorious world would be apt to stigmatize the deceased Lord in his grave, and to infer, whether right or wrong, that he died neither one thing nor the other, neither Protestant nor Catholic; but finished his career in impenitence. Mr. Gahan also said he acted herein merely from principle and from conscientious motives; that he did not recur to counsel for advice until he had previously given into the Chancery Office an answer written by himself and in his own words; that when he found it necessary, in his own defence, to have his conscientious answer arranged in a legal form, he applied for instruction to Counsellor Bellew, who very humanely and charitably came forward to extricate him from the perplexing difficulties which he had to encounter; that he did not rightly know what a legal demurrer was until that time, though he happened of his own accord to make use of the word *demur* in his former answer; that he was not in a situation to employ and fee lawyers on the occasion, as he had no settled living in the church, but



depended for his subsistence on the benevolence of his friends, and the scanty pittance of a small weekly collection, with which he was content.

Mr. Gahan positively disavowed the charge of a contempt of court. God forbid, said he, that I should entertain the most distant idea of contempt for the higher powers, which according to the dictates of my religion I am in conscience bound to honour, respect, and obey. For this reason I have made it my constant practice these forty years past, in my native city of Dublin, to teach and preach submission to the laws, obedience to the ruling powers, and allegiance to our gracious Sovereign. I have also, since last December, punctually and obediently attended six painful examinations concerning the cause still pending, and with no small inconvenience I have undertaken a journey to this remote town, and presented myself here this day to testify my obedience and respect for this honorable court.

In fine, Mr. Gahan was asked, *if Lord Dunboyne had told him at any time during his last illness what religious persuasion he was of, whether a Protestant or a Roman Catholic?* To this question he replied that he conceived, with humble submission, that he was not bound nor at liberty to disclose, either directly or indirectly, what Lord Dunboyne might have told him in his clerical capacity, and in a confidential way, because a Roman Catholic clergyman is forbidden by the rules of his religion to reveal or make use *in foro externo* of any knowledge which he acquires only *in foro interno*, particularly when the use of such a knowledge, if existing, may prove detrimental to a person who, with regard to the concerns of his soul, places a full and entire confidence in his fidelity, and does not entertain the least suspicion that he ever will, Judas like, turn public accuser, and appear in judgment to betray and criminate him either present or absent, either living or dead. Mr. Gahan observed then, that his case was singular, uncommon, and widely different from that of the generality of witnesses, and declared that he would rather lay down his head on a block, and forfeit his life like old Eleazar, (2. Machab. c. 6.) than do what to him appeared to be dishonorable, irreligious, immoral, and scandalous in the extreme.

Mr. O'Grady, on behalf of the Plaintiff, said, he was under the disagreeable necessity of desiring the opinion of the court on the subject.

Lord Kilwarden then repeated the question to Mr. Gahan, and asked him whether he would answer it or not?

Mr. Gahan, in a manner, and with an earnestness and respect which produced a strong effect on the minds of a crowded audience, assured his Lordship that it gave him the utmost concern not to be able to satisfy the court on the subject; that nothing was so far from his mind as a wish to shew any disrespect—that on the contrary, he publicly and sincerely professed the utmost respect for the court in which he stood, but submitted, that his Lordship could not wish him to finish a life of above seventy years, employed in preaching the Gospel, and recommending and enforcing submission to the laws and observance of moral conduct, by an open act of sacerdotal perjury, and a violation of that morality he had been so long teaching! He assured the court that by the principles of his religion he was prohibited from betraying the secrecy required of him, as to facts communicated to him in the exercise of his functions as a Minister of the Gospel; and that for that reason, and that only, he was under the necessity of declining to answer the question further than he had done.

Lord Kilwarden said, he was not soliciting him to answer, or not to answer, or telling him what he ought to do, but merely desired to know whether he would answer or not, adding that he had an abstract duty to discharge, and which he was determined to perform. He then declared, that in refusing to answer the question put to him, the Rev. Wm. Gahan was in his opinion, guilty of a contempt of court; but said he would be glad to hear any gentleman employed on either side, or as an *amicus curiæ*, without being employed on either side, who chose to stand up, and to shew him that he was wrong.

Mr. Ponsonby then submitted, that the Reverend Gentleman, in answering the question put to him, might criminate himself, as by the existing laws, any person aiding and assisting a person in being perverted from the Protestant to the Roman Catholic Religion, was made subject to severe penalties, and that the Reverend Gen-

tleman having declared. that abstracted from his capacity of a Roman Catholic Clergyman, in the exercise of his functions, he knew nothing of such declarations as the question implied, if he were to answer any thing that would shew he acted in that capacity he would come under, the description of a person aiding and assisting in the perversion of the deceased, by which he would become subject himself to penalties, and was of course not bound to answer further than he had done.

Mr. *Bellew*, who was Counsel for the Defendants, after relying on the same points that were put by Mr. Ponsonby, stated, that in his opinion the witness was not bound by law to disclose any thing, the knowledge of which he had acquired merely from confidence reposed in him in the exercise of his functions as a Roman Catholic Clergyman, and declared that what he had heard stated to be the law on that subject, he was unable to comprehend or understand ;he said he had always conceived, that whatever was contrary to sound morals and the general principles of religion, or as Lord Mansfield had somewhere stated, what was *contra bonos mores*, was contrary to law; and he asked whether any thing could be more contrary to the principles of morality and religion, than that the communications which any individual had with the minister of the Gospel, in his capacity as such, with a view to his spiritual welfare, and prescribed by the religion which he professed, should become evidence against him in a temporal court, to affect his property and even his life? Was it not enough that all the sources of knowledge common to mankind in their intercourse with each other, should be open, as means of procuring evidence on such occasions, without putting an individual to the alternative of either declining to seek to make his peace with his Creator, according to the dictates of the religion he professes and believes in, or doing so at the peril of forfeiting his life and property, by having his most secret thoughts and actions, known only to his God and the Minister of religion, actually dispensing his graces, made public against him by such minister in a court of Justice; was it possible such could be the spirit of the law in any civilized country? could it be said to be the spirit of the laws of Eng-

land? why was it that our laws protected an attorney and counsel in a cause from being obliged to give evidence of matters communicated to them in the cause of their clients? The learned counsel said he could find no act of parliament for such protection—but it was justly considered that by the common law of the land, without any interference of the legislature, such a disclosure was forbidden; because it was contrary to good morals and the general principles of society, that communications made, and confidence of necessity reposed, in order to enable the party to make his defence or assert his claim, should ever be made use of to deprive him of his property, or hurt him in his person. Was it then less contrary to good morals, and the general principles of society, that communications made, and confidence of necessity reposed, in order to enable the party to make his defence, before his Creator, in the next world, should be made use of in temporal courts, to deprive him of his property or his life in this world? Would not the best pledge and security which any government possessed for its stability and the preservation of good order, be thus cut up by the roots, where the subjects of a kingdom are told the Law will not permit them, with safety to themselves; to practice Religion, or take advice from their spiritual pastors as to their spiritual concerns? The learned Gentleman then stated, that he conceived the Religion of this country was part of its Law, and that the Roman Catholic Religion, as to the practice of it, was as much under the protection of the Law as the Protestant; that it was recognized and regulated by an Act of Parliament, that a College was erected and maintained out of the public purse, for the purpose of providing Priests to teach it, and perform the ministry of it; that by the law of the land it was provided that nothing but Catholic Doctrine should be taught in such College; and that the Visitors of such College, of whom the noble and learned Judge on the Bench was one, would be bound by the law, if acting in that capacity, to silence and s persede any professor who in such College should teach t at the disclosure now sought for could be given; and yet it was contended, that by the law of the same land,

he was bound where he now sat, to punish as contempt, the refusal of such a disclosure: that the law of this country consisted of such contradictory injunctions, Mr. Bellew said, he could not conceive; on the contrary, he felt in his own mind, that neither Protestant or Catholic Clergyman could be obliged to give evidence of matters, the knowledge of which, if existing, had been derived to them as in the present case; and concluded by observing, that were this the proper place for him to enter at large on the subject, he could add a great deal more than what he had said, but\* trusted he had said enough to shew that it was at least doubtful whether he was by Law bound to answer, and that at all events, the Rev. Gentleman had acted as became him, and that his conduct evidently was the result of principle, and not of any disrespect of Court; and that in not violating an acknowledged principle of the Religion of which he was a Minister, a Religion publicly and universally known, he exhibited himself as an object more calculated to obtain the applause and respect of every good and wise man; than to draw down the punishment of the Laws of an enlightened country.

Lord Kilwarden made some observations in answer to what had been said on behalf of Mr. Gahan; and concluded by declaring that he had no doubt but that he was by law bound to answer, and for his refusal sentenced him to a week's confinement in the gaol of Trim. Mr. Gahan bowed with the utmost respect and submission, and said, it gave him great concern not to be able to satisfy the court, that he was entirely disinterested as to the event of the cause, but acted from principle, and if instead of a week's imprisonment he went to forfeit his life

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\* In a Case in *Peake's Nisi Prius*, relative to the stealing of Madam Du Barre's Jewels, Lord Kenyon states his opinion against admitting such evidence as was sought from Mr. Gahan.

In BURNES'S Ecclesiastical Law, title *confession*, it appears that by the canons of the Protestant Church, the Bishop is required to suspend any Clergyman who gives evidence in any Court of Law, of any matter that comes to his knowledge, in administering spiritual comfort in the exercises of his functions.

at that moment, he must equally, without hesitation, decline any further answer than what he had given. He was then conducted by the Sheriff to the gaol of Trim.

The next Witnesses produced, was a clerk from the Roll's Office, with an attested copy of the Minister's certificate of Lord Dunboyne's conformity to the Protestant Religion ; after which the Plaintiff closed his case.

The Defendants then produced a clerk from the Roll's Office, with the Roll containing Lord Dunboyne's name as one of the persons who took the Oath of Allegiance as a Catholic at the Assizes of Clonmell, in the year 1778, and proved by Mr. Justin Kearney, who had been examined by the Plaintiff, to shew that he brought Mr. Gaban to Lord Dunboyne—his Lordship's hand-writing to the Roll containing the said Oath and Declaration.—Here the Case closed on both sides as to evidence.

Mr. CURRAN then spoke ably to the evidence on behalf of the Defendant, and stated, that independent of every other ground, they must succeed on the informality in the Certificate of Lord Dunboyne's conformity to the Protestant Religion ; the Act of Parliament requiring that in order to be considered by law a Protestant, he should, besides receiving the Sacrament and taking the Oaths, file a Certificate under the *hand* and *seal* of the Minister from whom he receives the Sacrament, of his having received it during divine service, and of his having before him taken the Oaths of Allegiance, supremacy, and abjuration, and subscribed the declaration against Popery ; whereas the Certificate produced, certified that he received the Sacrament immediately after divine service, and without stating as required, that he had taken the particular specified Oaths : states that he took the Oaths prescribed by Law, and concludes under the hand, without the seal of the Minister ; all which objections Mr. CURRAN contended, rendered the Certificate bad, as not being according to the Act of Parliament ; and the consequence was, that Lord Dunboyne never was in law a Protestant, and having taken the Oaths of Allegiance as a Catholic, had a right to make the will in question.

Mr. O'GRADY, on behalf of the Plaintiff, endeavoured to shew the objections to the Certificate were not such

as to render it essentially bad, and stated what he conceived to be an objection to the evidence, of Lord Dunboyne's having taken the Oath of Allegiance as a Catholic, viz. That he had not added to his name, his description and place of residence; but the Act of Parliament does not require that the party taking the Oath should do so, but merely that he should sign his name.

It was then agreed, that all the facts should be found in the shape of a special verdict, so as to have the opinion of the Court of King's Bench next Term, as to the Law resulting from them, which was accordingly done.

Shortly after Mr. GAHAN had been committed to goal, the Jury, on a separate issue sent to them, having found that Lord Dunboyne died a Catholic.


Lord Kilwarden observed, that the Plaintiff not having suffered by Mr. Gahan's refusal to answer the particular question before stated, and it being very clear that he had acted from principle, and not from disrespect to the Court, said he did not consider him an object for punishment; wherefore as he thought the dignity of the Law sufficiently vindicated by his committal: he ordered him to be immediately discharged, which was instantly done.

FINIS.

# LITANY

## FOR A HAPPY DEATH,

*Comprised by a Young Lady, who at ten years of age,  
was Converted to the Catholic Faith, and died at  
eighteen, in the Odour of Sanctity.*



**O** LORD Jesus, God of Goodness, and Father of mercies, I approach to thee with a contrite and humble heart; to thee I recommend the last hour of my life, and the decision of my Eternal doom.

When my feet, benumbed with death, shall admonish me that my mortal course is drawing to an end,—*Merciful Jesus, have mercy on me.*

When my eyes dim and troubled at the approach of death, shall fix themselves on thee; my last and only support,—*Merciful Jesus, have mercy on me.*

When my face pale and livid, shall inspire the beholders with pity and dismay; when my hair, bathed in the sweat of death and stiffening on my head, shall forbode my approaching end,—*Merciful Jesus, have mercy on me.*

When my ears, soon to be for ever shut to the discourse of men, shall be open to hear the irrevocable decree, which is to cut me off from the number of the living,—*Merciful Jesus, have mercy on me.*

When my Imagination agitated by dreadful spectres, shall be sunk in an abyss of anguish; when my soul afrighted with the sight of my Iniquities, and the terrors of my Judgment, shall have to fight against the Angel of Darkness, who will endeavour to conceal thy mercies from my eyes, and to plunge me into despair,—*Merciful Jesus, have mercy on me.*

When my poor heart, yielding to the pressure, and exhausted by its frequent Struggles against the Enemies of Salvation, shall feel the pangs of Death,—*Merciful Jesus, have mercy on me.*

When the last tear, the forerunner of my dissolution, shall drop from my eyes, receive it as a Sacrifice of ex-



## 24      *Litany for a Happy Death.*

piation for my Sins; grant that I may expire the Victim of Penance, and in that dreadful moment,—*Merciful Jesus, have mercy on me.*

When my Friends and Relations encircling my bed, shall shed the tear of pity over me, and invoke thy clemency in my behalf,—*Merciful Jesus, have mercy on me.*

When I shall have lost the use of my Senses, when the World shall have vanished from my sight, when my agonizing soul shall feel the Sorrows of Death,—*Merciful Jesus, have mercy on me.*

When my last sigh shall Summon my Soul to burst from the Embraces of my Body, and to spring to thee on the wings of Impatience and Desire,—*Merciful Jesus, have mercy on me.*

When my Soul trembling on my lips, shall bid Adieu to the World, and leave my Body lifeless, pale and cold, receive this separation as a Homage, which I willingly pay to thy Divine Majesty, and in that last moment of my Mortal Life,—*Merciful Jesus, have mercy on me.*

When at length my Soul, admitted to thy Presence, shall first behold the Splendor of thy Majesty, reject me not, but receive me into thy bosom, where I may for ever sing thy praises, and in that moment, when Eternity shall begin to me,—*Merciful Jesus, have mercy on me.*

*Let us pray.*

O GOD, who hast doomed all Men to die, but hast concealed from all the hour of their Death, grant that I may pass my days in the Practice of thy Holiness and Justice, and that I deserve to quit this World in the peace of a good Conscience, and in the Embraces of thy Love, through Christ our Lord. *Amen.*